



## **DEPARTMENT OF THE INTERIOR**

### **Fish and Wildlife Service**

**[FWS-R8-ES-2012-N185; FF08E00000-FXES11120800000F2-123-F2]**

### **Draft Environmental Assessment and Proposed Habitat Conservation Plan for the Interim Operations of PacifiCorp's Klamath Hydroelectric Project on the Klamath River, Klamath County, Oregon, and Siskiyou County, California**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability; draft environmental assessment and proposed habitat conservation plan; request for comment.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, have prepared a draft environmental assessment (EA) under the National Environmental Policy Act (NEPA) for the interim operations of the Klamath Hydroelectric Project in response to an application from PacifiCorp (applicant) for a 10-year incidental take permit for two species under the Endangered Species Act of 1973, as amended (16 UDC 1531, et seq; Act). We request data, comments, new information or suggestions from the public, other concerned governmental agencies, the scientific community, Tribes, industry, or any

other interested party on the applicant's permit application and associated habitat conservation plan (plan), and also on the associated draft EA.

**DATES:** To ensure consideration, please send your written comments by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** Please address written comments to Laurie R. Sada, Field Supervisor, U.S. Fish and Wildlife Service, Klamath Falls Fish and Wildlife Office, 1936 California Avenue, Klamath Falls, OR 97601. Alternatively, you may send comments by facsimile to 541-885-7837.

**FOR FURTHER INFORMATION CONTACT:** Ron Larson, Biologist, or Trisha Roninger, Assistant Field Supervisor, at the address shown above or at 541-885-8481 (telephone). If you use a telecommunications device for the deaf, please call the Federal Information Relay Service at 800-877-8339.

**SUPPLEMENTARY INFORMATION:** The application for an incidental take permit (ITP) addresses the potential for "take" of the Lost River sucker (*Deltistes luxatus*) and the shortnose sucker (*Chasmistes brevirostris*), two fishes federally listed as endangered. The applicant would implement a conservation program to minimize and mitigate the project activities, as described in the applicant's plan.

The applicant has developed a plan as part of their application for an ITP under section 10(a)(1)(B) of the Act. The proposed plan includes measures necessary to minimize and mitigate the impacts, to the maximum extent practicable, of potential proposed taking of two federally listed species to be covered by the plan, and the habitats upon which they depend, resulting from the interim operations of the Klamath Hydroelectric Project (Project), in Klamath County, Oregon, and Siskiyou County, California. This ITP would be in effect for a prospective 10-year interim period that the Project would be operating on an annual license from the Federal Energy Regulatory Commission.

We have prepared an EA to evaluate the impacts of several alternatives related to the potential issuance of an incidental take permit (ITP) to the applicant, as well as impacts of the implementation of the supporting proposed plan.

## **Background Information**

Section 9 of the Act and its regulations prohibit taking of fish and wildlife species listed as endangered or threatened under section 4 of the Act. Under the Act, the term “take” means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. The term “harm” is defined in the regulations as significant habitat modification or degradation that results in death or injury of listed species by significantly impairing essential behavioral patterns, including breeding,

feeding, or sheltering (50 CFR 17.3). The term “harass” is defined in the regulations as to carry out actions that create the likelihood of injury to listed species to such an extent as to significantly disrupt normal behavioral patterns, which include, but are not limited to, breeding, feeding, or sheltering (50 CFR 17.3).

However, under specified circumstances, the Service may issue permits that allow the take of federally listed species, provided that the take that occurs is incidental to, but not the purpose of, an otherwise lawful activity. Regulations governing permits for endangered and threatened species are at 50 CFR 17.22 and 17.32, respectively.

Section 10(a)(1)(B) of the Act contains provisions for issuing such incidental take permits to non-Federal entities for the take of endangered and threatened species, provided the following criteria are met:

1. The taking will be incidental;
2. The applicants will, to the maximum extent practicable, minimize and mitigate the impact of such taking;
3. The applicants will develop a proposed plan and ensure that adequate funding for the plan will be provided;
4. The taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and
5. The applicants will carry out any other measures that the Service may require as being necessary or appropriate for the purposes of the plan.

The applicant seeks incidental take authorization for the following federally listed endangered fish species—Lost River sucker (*Deltistes luxatus*) and the shortnose sucker (*Chasmistes brevirostris*)—which we will refer to as the “covered species” in this notice.

The activities proposed to be covered under this plan include activities that are otherwise necessary to operate and maintain project facilities during the permit term. In general, the covered activities include the following: (1) operate and maintain the spill gates at Link River dam for regulation and releases of flows from Link River dam to maintain water in the East Side and West Side water conveyance features, and operate and maintain the East Side and West Side canals and flowlines following shutdown of the East Side and West Side powerhouse facilities; (2) operate and maintain Keno Dam, spill gates, and fish ladder, and regulate the water level upstream of Keno Dam in accordance with the existing agreements and licenses; (3) operate and maintain J.C. Boyle Dam, fish bypass system, water conveyance system, turbines, and powerhouse facilities, and regulate water levels and flows necessary to maintain minimum reservoir elevations, river flows and ramping rates; (4) operate and maintain Copco No. 1 and Copco No. 2 Dams, water conveyance systems, turbines, and powerhouse facilities, and regulate water levels and flows necessary to maintain minimum reservoir elevations, river flows and ramping rates; and (5) operate and maintain Iron Gate Dam (and associated appurtenances), penstocks, turbines, and powerhouse facilities, and regulate releases from Iron Gate Dam in accordance with instream flow and ramping rate requirements.

## **Alternatives in the Draft Environmental Assessment**

The proposed action presented in the draft EA will be compared to the no-action alternative. The no-action alternative represents estimated future conditions to which the proposed action's estimated future conditions can be compared. Other alternatives considered, including their potential impacts, are also addressed in the draft EA.

### *No Action Alternative*

Under the no-action alternative, we would not issue a permit. The no-action alternative would not achieve the applicant's objectives and would not allow for reduced incidental take of federally-listed species or mitigation of impacts to listed species.

### *Proposed Alternative*

Under the proposed alternative, the applicant would continue to operate the Klamath Hydroelectric Project. The project consists of eight developments. The seven developments covered by the ITP are located on the Klamath River between river mile (RM) 190.1 and 254.3, including (in order moving upstream): Iron Gate Dam and Reservoir (RM 190.1 to 196.9), Copco No. 2 Dam and Reservoir (RM 198.3 to 198.6), Copco No. 1 Dam and Reservoir (RM 198.6 to 203.1), J.C. Boyle Dam and Reservoir (RM 220.4 to 228.3), Keno Dam and Reservoir (RM 233 to 253.1), and East Side and

West Side facilities (both in Link River at RM 253.1 to 254.3).

The “covered activities” included in the plan consist of a variety of activities at the seven facilities listed above that are necessary to generate hydroelectric power and to maintain these facilities. These include: operate and maintain spill gates for regulation and releases of flows; operate and maintain canals, flowlines, and other water conveyance systems; operate and maintain penstocks, turbines, and powerhouse facilities; operate and maintain fish bypass systems; and regulate water levels and flows necessary to maintain minimum reservoir elevations, river flows, and ramping rates.

The applicant proposes to avoid, minimize, and mitigate the effects to the covered species associated with the covered activities by fully implementing the plan. The following minimization and mitigation measures will be implemented as part of the plan: Take of listed species will be substantially reduced by shutting down the East Side and West Side developments within 30 days of issuance of the ITP. These facilities will remain substantially shut down until eventual decommissioning of the facilities as determined by the Federal Energy Regulatory Commission. Mitigation of take will result from funding of restoration projects and other activities that will benefit the recovery of the species.

Under the proposed action alternative, we would issue an incidental take permit for the applicant’s proposed project, which includes the activities described above and in

more detail in the plan.

## **Environmental Review**

As described in our EA, we have made the preliminary determination that approval of the proposed plan and issuance of the permit would qualify as Finding of No Significant Impact (FONSI) under NEPA (42 U.S.C. 4321 et seq.), as provided by Federal regulations (40 CFR 1500, 5(k), 1507.3(b)(2), and 1508.4) and the Department of the Interior Manual (516 DM 2 and 516 DM 8). Our EA describes the project effects on all potential resources that could be adversely affected, including water resources (hydrology and water quality); biological resources (Lost River and shortnose suckers, anadromous fishes, and other fishes); socioeconomics (local employment, recreation, renewable energy, land use, and development); environmental justice; and cultural resources. It also includes an analysis of alternatives, and other required analyses such as unavoidable adverse effects, irreversible and irretrievable commitments of resources, short-term uses versus long-term productivity and cumulative effects, and the environmentally preferable alternative (the proposed project).

## **Public Comments**

We request data, comments, new information, or suggestions from the public, other concerned governmental agencies, the scientific community, Tribes, industry, or



any other interested party on this notice. We particularly seek comments on the following:

1. Biological information concerning the species;
2. Relevant data concerning the species;
3. Additional information concerning the range, distribution, population size, and population trends of the species;
4. Current or planned activities in the subject area and their possible impacts on the species;
5. The presence of archeological sites, buildings and structures, historic events, sacred and traditional areas, and other historic preservation concerns, which are required to be considered in project planning by the National Historic Preservation Act; and
6. Identification of any other environmental issues that should be considered with regard to the proposed development and permit action.

You may submit your comments and materials by one of the methods listed in the **ADDRESSES** section.

We will identify in the FONSI if we need to prepare further NEPA documentation. We will also consider public comments on the draft EA when making the final determination on whether to prepare additional NEPA documents on the proposed action.

## **Public Availability of Comments**

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

## **Availability of Documents**

You may obtain copies of the permit application, plan, and EA from the individuals in **FOR FURTHER INFORMATION CONTACT**. Copies of these documents are available for public inspection, by appointment, during regular business hours, at the Klamath Falls Fish and Wildlife Office (see **ADDRESSES**), and on our website at [www.fws.gov/klamathfallsfwo/](http://www.fws.gov/klamathfallsfwo/).

## **Next Steps**

We will evaluate the permit application; including the plan and comments we receive, to determine whether the application meets the requirements of section 10(a) of the Act. If the requirements are met, we will issue a permit to the applicant for the incidental take of the Lost River sucker and the shortnose sucker resulting from the implementation of the covered activities described in the plan. We will make the final permit decision no sooner than 30 days after the date of this notice.

#### **Authority**

We publish this notice under the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*; NEPA), and its implementing public involvement regulations in the Code of Federal Regulations (40 CFR 1500.1(b), 1500.2(d), and 1506.6), as well as in compliance with section 10(c) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*; Act).

**Dated:** January 22, 2013.

**Alexandra Pitts**

**Deputy Regional Director,  
Pacific Southwest Region.**

**[FR Doc. 2013-01664 Filed 01/25/2013 at 8:45 am; Publication Date: 01/28/2013]**